



Department of Justice

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**DEPARTMENT OF JUSTICE ANNOUNCES NEW PROTOCOL TO EXPEDITE
REVIEW PROCESS FOR TERMINATING OR MODIFYING OLDER
ANTITRUST DECREES**

WASHINGTON, D.C. -- The Department of Justice's Antitrust Division today announced a new protocol designed to expedite the review process for parties seeking to terminate or modify outstanding consent decrees. The protocol is effective immediately.

The new protocol is a voluntary procedure which can be utilized by parties seeking to modify or terminate consent decrees that do not contain an automatic termination provision. Most consent decrees entered into before 1980 do not contain such provisions.

A consent decree cannot be terminated or modified except by court order. Prior to making a recommendation to the court, the Division must determine the probable effects of termination or modification on the market at issue in order to make an informed representation to the court that the requested order is in the public interest.

In the past, when the Division has agreed to support termination or modification, it has taken on average about two years between the party's initial request and the filing of the motion. The new protocol is designed to enable parties to expedite the Antitrust Division's review by getting needed information to the Division more quickly.

The new protocol differs from the present decree review process in three ways. First, the party seeking termination or modification will provide its request with the specific information that the Division would normally gather in the course of its review. Having the requesting party

provide this material when it makes its request, rather than having the Division later request the information, is expected to reduce the time needed for the Division to act on the request. **(Please see Attachment)**

Second, the requesting party will contact other defendants bound by the decree and inform them of its intentions. Early involvement by all defendants will further streamline the review process.

Third, at the time the Division opens its review, the requesting party will agree to publish, at its own expense, notice of its intent to seek termination or modification and invite interested parties to provide the Division with relevant information. In determining what notice is appropriate at this stage, the Division will consider the cost of notice to the requesting party. This notice will not replace the notice and comment period that occurs after the motion to terminate or modify is filed with the court. Rather, the intent is that the additional pre-filing publication will cause any interested parties to come forward earlier in the process so that their concerns may be considered and addressed prior to the filing of a motion. The Division will take into account both concerns that are brought to its attention and appropriate inferences that might be drawn if no substantial concerns are raised at that time.

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ATTACHMENT

INFORMATION TO BE PROVIDED WITH REQUESTS THAT THE ANTITRUST DIVISION SUPPORT TERMINATION OR MODIFICATION OF CONSENT DECREES

1. The identity of the party making the request, its representative for purposes of the request, and the decree that is subject to the request; also the date of the decree's entry and the specific action requested (e.g., termination of the entire decree or a specific modification).
2. Confirmation that the party making the request has not been found in violation of the decree and is not aware of any ongoing decree violation or investigation by the FTC or the Antitrust Division into activities subject to the decree.
3. A statement of the reasons for the request, which may include any factors that the party making the request believes are relevant to the public interest, and which should include the following:
 - A.
Any legitimate business activities that may be prohibited or impeded by the decree.
 - B.
Any aspects of the decree that the party believes do not promote competition or the public interest.
 - C.
Any other burdens, costs or other adverse effects that the decree imposes on the party making the request or on others.
 - D.
Any changes in the factual circumstances relating to the decree, including changes in any relevant market covered by the decree.
 - E.
Any relevant changes in the law.
 - F.
An explanation of why, or to what extent, termination or modification of the decree would not undermine the purposes of the decree.
4. A description of how the party would change its manner of doing business if the decree were terminated or modified.
5. Copies, where applicable, of the party's most recent annual report, financial statement, and SEC Form 10-K.
6. Copies of the party's most recent business, marketing, or strategic plans for any product covered by the decree.

7. The identity (including the name of a contact person, with telephone number and address) of all significant competitors; the party's ten largest customers; and, if appropriate, the party's ten largest suppliers, for each product or service affected by the decree.

8. The identity of any intellectual property at issue in the decree and any licenses pertaining to that intellectual property, together with the expiration or termination date of the intellectual property and any licenses to it.